

Inspector General

United States

Department *of* Defense



Price Reasonableness Determinations for Contracts
Awarded by the U.S. Special Operations
Command

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Acronyms and Abbreviations

BCM	Business Clearance Memorandum
DCG	Desktop Contracting Guide
FAR	Federal Acquisition Regulation
GWOT	Global War on Terror
IG	Inspector General
SOFARS	Special Operations Federal Acquisition Regulation Supplement
USSOCOM	U.S. Special Operations Command



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

September 18, 2009

MEMORANDUM FOR UNDERSECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND

SUBJECT: Price Reasonableness Determinations for Contracts Awarded by the U.S.
Special Operations Command (Report No. 2009-102)

We are providing this report for your information and use. We considered management comments on the draft of this report in preparing the final report.

Comments on the draft of this report conformed to the requirements of DOD Directive 7650.3 and left no unresolved issues. Therefore, we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9071 (DSN 664-9071).

Bruce A. Burton
Deputy Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Price Reasonableness Determinations for Contracts Awarded by U.S. Special Operations Command

What We Did

We reviewed a sample of 15 contracts with a value of about \$2.4 billion to determine whether the U.S. Special Operations Command (USSOCOM) complied with Federal Acquisition Regulation requirements when determining price reasonableness. We selected the sample from 734 contracts with a value of \$3.3 billion that USSOCOM identified for FY 2003 through FY 2007.

What We Found

On 4 of 15 contracts, USSOCOM contracting officials did not perform or document the price reasonableness determination in accordance with the Federal Acquisition Regulation. In total, USSOCOM did not adequately document \$721 million in negotiated prices on the four contracts. Of the \$721 million, USSOCOM did not adequately support \$356 million on one contract for commercial hardware items. On two contracts, we were unable to fully evaluate the contracting officers' price reasonableness decisions because essential documentation was not retained as part of the contract file. As a result, we were unable to verify USSOCOM's analyses of the \$360 million not-to-exceed amount for time-and-materials and firm-fixed-price direct labor costs. On the final contract, USSOCOM did not completely translate the supporting documentation for \$5.0 million into English.

USSOCOM internal controls were not adequate to ensure that USSOCOM contracting officials approved required contracting documentation or that the contract files contained the supporting documentation of the price reasonableness decisions. In addition, the USSOCOM policies and procedures did not address the alpha contracting methods being used to negotiate the contracts.

What We Recommend

We recommend that the Commander, USSOCOM, improve contracting internal controls by emphasizing to contracting personnel that they comply with the Federal Acquisition Regulation when performing and documenting their price reasonableness determinations, as well as require the periodic review of contract files to determine that they contain the required documentation and the necessary signatures.

We also recommend an update to the *USSOCOM Desktop Contracting Guide* to include policy and procedures for all contracting methods that comply with the Federal Acquisition Regulation.

Management Comments and Our Response

The Director, Center for Acquisition and Logistics (responding for the Commander, USSOCOM), agreed with all three recommendations in the report. The comments were responsive to the intent of the recommendations. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commander, U.S. Special Operations Command		1, 2, and 3

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Introduction

Objective

The audit objective was to determine whether the U.S. Special Operations Command (USSOCOM) complied with Federal Acquisition Regulation (FAR) requirements for determining price reasonableness.

We performed this audit pursuant to Public Law 110-181, "The National Defense Authorization Act for Fiscal Year 2008," section 842, "Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan," January 28, 2008. Section 842 requires "thorough audits . . . to identify potential waste, fraud, and abuse in the performance of (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan."

See Appendix A for discussion of scope, methodology, and prior audit coverage.

Background

USSOCOM is one of 10 Combatant Commands. USSOCOM's mission is to provide fully capable special operations forces to defend the United States and its interests and to plan and synchronize operations against terrorist networks.

The Nunn-Cohen Amendment of 1986 (section 167, title 10, United States Code) establishes USSOCOM as a Combatant Command. The Amendment also provides the authority, direction, and control of funds that allow the development and acquisition of special operations equipment and the preparation of special operations forces to carry out assigned missions.

USSOCOM's initial responsibility was to organize, train, and equip special operations forces from the Army, Navy, and Air Force. In 2002, the Secretary of Defense expanded USSOCOM's role to include leading DOD's GWOT operations. Marine Corps special operations forces were added to USSOCOM's responsibilities in early 2006.

Today, USSOCOM serves as the lead combatant commander for planning, synchronizing, and as directed, executing global operations against terrorist networks. USSOCOM is headquartered at MacDill Air Force Base in Tampa, Florida.

Review of Internal Controls

We determined internal control weaknesses in USSOCOM existed as defined by DOD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. USSOCOM contracting officials did not approve required documentation or document their price reasonableness decisions. In addition, the USSOCOM policies and

procedures did not address alpha contracting methods being used to negotiate the contracts. Implementing Recommendations 1, 2, and 3 will improve these conditions. USSOCOM has begun corrective action to ensure contract files contain supporting documentation. A copy of the final report will be provided to the senior USSOCOM official responsible for internal controls in USSOCOM.

Finding. Price Reasonableness of U.S. Special Operations Command Contracts

USSOCOM contracting officials did not always comply with the FAR when performing and documenting fair and reasonable price determinations. Of the 15 contracts reviewed, with a value of about \$2.4 billion, we identified 4 contracts that had negotiated contract prices of about \$721 million that did not comply with the FAR for supporting and documenting price reasonableness decisions. The price reasonableness determinations did not comply with the FAR because:

- On one contract, the contracting specialist used the contractor's catalogs for determining the price reasonableness of \$356 million in commercial hardware items. The contracting specialist's approach did not include the additional documentation for commercial items required in the FAR.
- On two contracts, USSOCOM did not retain documentation from Internet searches used to support the contracting officers' price reasonableness determinations on the \$360 million not-to-exceed amount for time-and-materials and firm-fixed-price direct labor costs.
- On another contract, the contracting officials did not completely translate the cost proposal and other supporting documentation from a foreign contractor into English. Therefore, we could not evaluate the price reasonableness determination for \$5.0 million.
- Other factors affecting USSOCOM price reasonableness determinations were the condition of the electronic contracting files, use of sole-source contracts, and the lack of policy and procedures for using the alpha contracting method.

As a result, we were unable to verify USSOCOM price reasonableness determination decisions involving \$721 million in negotiated contract prices on four contracts.

Price Reasonableness Criteria

The FAR requires that contracting officials make price reasonableness determinations prior to awarding a contract, and that documentation supporting these determinations is in the contract file. The criteria include FAR Subpart 15.402, "Pricing Policy," which states:

Contracting officers must --

- (a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer must not obtain more information than is necessary. To the extent that cost or pricing data are not required by 15.403-4, the contracting officer must generally use the following order of preference in determining the type of information required:
 - (1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by 15.403-3(b).
 - (2) Information other than cost or pricing data:
 - (i) Information related to prices (e.g., established catalog or market prices or previous contract prices), relying first on

information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under 15.403-1(b) (1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost information, that does not meet the definition of cost or pricing data at 2.101.

(3) *Cost or pricing data.* The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers must not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.

Additionally, FAR Subpart 6.303-2, “Content,” states that a sole-source contract or award of any contract without providing full and open competition shall have a justification that includes a determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable. FAR Subpart 4.803, “Content of Contract Files,” provides examples of the records normally kept in the contract files. These records include the contractor’s proposal, cost or price analysis, audit reports, and Certificates of Current Cost and Pricing Data.

USSOCOM Contracting Procedures

USSOCOM contracting officers used the Business Clearance Memorandum (BCM) as the primary document summarizing the contract negotiations. The *USSOCOM Desktop Contracting Guide* (DCG), chapter 15(4)(a), “Documenting the Negotiation,” states that the purpose of the BCM is to document all the discussions and pertinent information that formulate the business decisions made during the procurement process and the rationale for them. The Special Operations Federal Acquisition Regulation Supplement (SOFARS) requires BCMs to be approved and signed before a contract or a modification is executed. SOFARS 5615.406-1(a), “Pre-negotiation Objectives,” requires contracting officers to obtain business clearance approval prior to entering into negotiations or discussions and to document the negotiation objectives in the BCMs. SOFARS 5615.406-3-90(b), “Documenting the Negotiation,” further requires the contracting officer to obtain contract clearance approval after completion of negotiations or discussions and prior to award. It also requires that the completed BCM, including post-negotiation information, be included in the contract file.

Price Reasonableness Determination for Commercial Items

USSOCOM awarded one contract for commercial items without independently verifying the accuracy of the contractor’s catalog prices in accordance with the FAR. Contract H92222-07-D-0008, valued at \$422 million, was for the procurement and sustainment of a high-frequency radio system. The contract included 173 contract line item numbers primarily for hardware items with a value of \$356 million. The contractor supplied

catalogs to support the pricing for the contract line item numbers. According to the BCM, USSOCOM received a 20 percent discount off the catalog prices as a “most favored customer.”

The BCM stated that the contract specialist used the proposed contractor’s catalogs to determine the contractor prices as fair and reasonable without any further analysis. For the items not listed in the commercial catalogs, the contract specialist verified the accuracy of the mathematical calculations in the contractor’s cost build-up information. FAR Subpart 15.403-3(c)(1), “Requiring Information Other Than Cost or Pricing Data,” states that inclusion of a price in a catalog does not in and of itself establish fairness and reasonableness of the price.

FAR Subpart 12.209, “Determination of Price Reasonableness,” requires price reasonableness for commercial items to be established in accordance with FAR Subpart 15.4, “Contract Pricing.” FAR 15.402(a)(2), “Pricing Policy,” states that in evaluating price reasonableness the contracting officer should first rely on information available within the Government; second, on information obtained from sources other than the contractor; and, if necessary, on information obtained from the contractor. The pricing method for commercial items in FAR Subpart 15.403-3(a), “Requiring Information Other Than Cost or Pricing Data,” states that if the contracting officer cannot obtain adequate information from sources other than the contractor, the contracting officer must require submission of information other than cost or pricing data from the contractor to determine a fair and reasonable price. The contracting officer must require that the information submitted by the contractor include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold. The contracting officer did not perform any additional analysis beyond the prices in the sales catalog. Although USSOCOM received a 20 percent discount off the catalog prices, without additional analysis or similar sales data, the Government has no basis for relying on the catalog prices.

Documenting the Price Reasonableness Determinations

USSOCOM did not comply with the FAR for documenting the determination that prices negotiated were fair and reasonable for three contracts valued at \$527 million. As a result, we were unable to fully evaluate the contracting officers’ price reasonableness determination decisions for \$365 million in negotiated prices on these contracts. FAR Subpart 4.803 requires the contract file to contain the signed contract or award, contract modifications, and documents supporting modifications executed by the contracting office. The Defense Procurement Acquisition Policy, *Contract Pricing Reference Guide*, volume 1, “Price Analysis,” chapter 10, “Documenting Pricing Actions,” states:

Good documentation is essential to good contracting. As time goes on, you forget times, dates, persons involved, and other elements that are important in all aspects of contracting and pricing in particular ... Lack of documentation is generally treated as a lack of action. If it is not documented, it never happened.

FAR Subpart 15.406-3(a), “Documenting the Negotiation,” requires the contracting officer to document the principal elements of the negotiated agreement in the contract file. The documentation should include the purpose of the negotiation, a summary of the contractor’s proposal, any field pricing assistance recommendations, and documentation of fair and reasonable pricing.

Contract H92222-07-D-0015

This contract was a sole-source award to an Alaskan Native Corporation to build, field, and sustain the Psychological Operations Print System Program. The delivery order contract had a not-to-exceed price of \$260 million, which included \$180 million for time-and-materials and firm-fixed-price direct labor costs. According to the BCM, price reasonableness for the direct labor was evaluated by randomly selecting from the contractor’s accounting system salary information for 33 percent of the proposed labor categories. The contractor’s salary information was compared with salary information found on the Department of Labor and Salary.com Web sites. USSOCOM then compared the contractor’s fully burdened labor rates with five other firms with similar labor categories descriptions (that is, education, experience, credentials). Of the five firms, four were GSA schedule holders on the Professional Engineering Services schedule and one contractor was a manufacturing company with a USSOCOM contract.

Contract H92222-07-D-0017

This was a 5-year indefinite-delivery, indefinite-quantity contract for professional engineering and technical services to support the Psychological Operations Program Office. The contract was a sole-source award to an Alaskan Native Corporation. The delivery order contract had a not-to-exceed price of \$260 million, which included \$180 million in time-and-materials and firm-fixed-price direct labor costs. The analysis of the direct labor costs described in the BCM was similar to the analysis performed for H92222-07-D-0015. The one exception was that the Defense Contract Audit Agency performed an audit of the direct labor costs for another proposal that the contractor had submitted for a contract being awarded by the U.S. Army Communications Electronics Life Cycle Management Command. The Defense Contract Audit Agency audit “questioned a portion of the direct labor rates for 92 of the proposed 143 labor categories.” In addition, the Defense Contract Audit Agency expressed the opinion that a free salary service such as Salary.com does not provide a reasonable and reliable basis for labor compensation rates.

On contracts H92222-07-D-0015 and H92222-07-D-0017, the contracting officer explained that a printout of the information obtained from the Web sites was not included in the contracting file since it could be accessed through the Web sites listed in the BCM. We performed a limited review of the labor categories listed in the BCM using the Web sites and were unable to recreate or duplicate the contracting specialist’s results. In this instance, listing the Web sites in the BCM is not sufficient documentation to support the price reasonableness determination. In addition, the contract file did not contain the details on the comparison of the fully burdened rates. The contracting officer explained that a support contractor performed the comparison “but did not provide the information to the contracting office, nor did the support contractor file the documentation in the

electronic contract file.” Without the printouts from the Web sites and the supporting documentation on the fully burdened labor rates, we were unable to fully evaluate the contracting officer’s price reasonableness determination decision. We also agree with the Defense Contract Audit Agency that performing Internet searches of free salary services does not provide a reliable basis for assessing the reasonableness of the contractor’s direct labor rates.

Contract USZA22-03-C-0038

This was a sole-source award based on unusual and compelling urgency made to a Swedish company for the purchase of anti-structure munitions for the M3 rifle. It was a firm-fixed-price contract for about \$6.9 million. USSOCOM contracting officials definitized the contract in modification 2 and did a price reasonableness determination. According to the BCM, USSOCOM determined price reasonableness by relying on the contractor’s cost and pricing data and an audit performed by the auditing agency of the Swedish government. The contract file did not contain a Certificate of Current Cost or Pricing Data.

The BCM explained that “an audit by DCAA [Defense Contract Audit Agency] was anticipated, but due to extreme delays with the contractor submitting a qualifying proposal, there was not sufficient time for an audit.” Instead, the cognizant auditing agency of the Swedish government conducted the audit that USSOCOM relied on to determine price reasonableness. However, the audit report provided to USSOCOM was in Swedish. Contracting officials did not completely translate either the audit report or the proposal documents into English when evaluating the contractor’s proposal. Because of this, we were unable to fully evaluate the contracting officer’s price reasonableness determination, valued at \$5.0 million. For instance, a significant cost element—direct labor rates—was not translated. Therefore, we could not verify that USSOCOM properly evaluated the labor categories when determining price reasonableness. In addition, the justification for not using the Defense Contract Audit Agency to audit the proposal was questionable, since USSOCOM did not negotiate the definitized price until modification 2, which was more than 4 months from the date of the initial contract award.

USSOCOM’s Electronic Contract Files

USSOCOM’s official electronic contracting files were not sufficient, organized, or complete. The files provided appeared to be a data dump of documents that could have been related to the contract. The contracting files contained documents that were missing the required contracting officials’ signatures and in some instances, the files did not include the required documentation.

Business Clearance Memorandum

We identified seven contracts that had unsigned BCMs in the contract files. The BCMs supported contracting actions that ranged from \$649,949 to \$300 million. SOFARS attachment 5601-1 requires that appropriate levels of authority review and approve BCMs prior to contract award. Review and approval procedures must be in accordance with the dollar value limitations specified. For example, for the period from March

2002 through February 2007—the period covered by most of the contracts reviewed—the reviews specified were as follows.

Table. Review and Approval Process

Action	Review	Approval
\$500,000 to \$5,000,000	Legal	Contracting Officer
\$5,000,000 to \$50,000,000	Legal	Branch Chief
Over \$50,000,000 to \$100,000,000	Legal	Chief, Contracting Officer
Over \$100,000,000	SOAL-KA* and Legal	SOAL-KA*

* Special Operations Acquisition and Logistics-Field Assistance Division.

The review and approval of the BCM is an important internal control over the award of the contracts and the contract prices. Without a signed BCM the contracting officer cannot be assured that management would approve of the prices paid or the negotiation process. USSOCOM officials are aware of the issues related to the insufficiency of these files and are taking action to resolve these issues and bring the files into conformance with the FAR.

Missing Documents

The electronic contract files that USSOCOM provided did not always contain required documentation. As discussed previously, the contract files for H9222-07-D-0015 and H9222-07-D-0017 did not contain documentation on a support contractor's analysis of the fully burdened labor rates. Two other contract files (H92222-05-C-0016 and USZA22-03-C-0038) did not have the Certificates of Current Cost and Pricing Data required by FAR 15.406-2. Another contract file for H92222-05-D-0002 contained only one of the two contractor proposals referred to in the BCM.

Other Factors Affecting the Price Reasonableness Determinations

We identified two additional factors that could affect the contracting officer's price reasonableness determinations: USSOCOM use of sole-source contracts and alpha contracting.

Sole-Source Contracts

USSOCOM awarded 10 of 15, or 67 percent, of the sample contracts on a sole-source basis. The 10 contracts had an estimated total value of \$2 billion, which represented 81 percent of the total dollar value for the 15 contracts reviewed. The FAR allows USSOCOM contracting officials to award the sole-source contracts with the appropriate justification. We did not review the adequacy of the sole-source justifications for these contracts to determine their compliance with the FAR.

USSOCOM use of sole-source contracts is not necessarily in the best interest of the Government. As the Administrator, Office of Federal Procurement Policy, explained in a May 31, 2007, memo, "competition is the cornerstone of our acquisition system." He

reemphasized the need for competition, stating that the benefits are savings for the taxpayer, improved contractor performance, reduced fraud, and promote accountability for results. In distributing the Administrator's memo to DOD, the Director, Defense Procurement and Acquisition Policy, stated that DOD needed to place greater emphasis on promoting competition, including placement of delivery orders against multiple-award contracts.

Alpha Contracting Method

USSOCOM contracting officials used the alpha contracting method when negotiating six of the contracts valued at \$1.4 billion. USSOCOM officials provided us a document from the Internet to explain alpha contracting. According to the document, alpha contracting is an integrated product team approach that involves officials of the requiring department, the contracting office, auditors, the contractor, and the principal subcontractors. The group jointly develops the technical and cost details of the contract agreement.

USSOCOM did not have any formal policies and procedures specifying how to implement alpha contracting. Based on the number of contracts negotiated using alpha contracting and their dollar value, USSOCOM needs to establish an internal control over the process. Specifically, USSOCOM needs to establish formal policies and procedures governing the use of the alpha contracting method.

Actions Taken by USSOCOM

During our audit, USSOCOM contracting officials provided us a briefing on actions being taken to resolve deficiencies in the electronic contract files. The briefing identified problems with the contract files that included documents with missing signatures, missing files, and too many versions of the same document. Specific actions that USSOCOM contracting officials were taking included updating the DCG, chapter 4, "Administrative Matters," providing training to the contracting directorate on improving the contract files chain of custody, contract file organization, and scanning in the signed/final documents. USSOCOM has updated the SOFARS 5607.104(f) and the DCG, chapter 7, "Acquisition Planning," to include guidance and procedure for the alpha contracting methodology. USSOCOM's memo for the support of the FY 2009 Annual Statement of Assurance acknowledged the material weakness of the electronic contract file documentation, specifically, documenting fair and reasonable prices. In addition, USSOCOM issued instructions on how to handle contracting documents missing a signature or a date or both. The contracting officials stated that the problems with the contract files were in part attributable to the increased workload from wartime requirements and a shortage of trained contracting personnel. USSOCOM officials stated they had hired additional personnel, which should help in correcting these problems.

Conclusion

We commend the actions that USSOCOM is taking on the contract files. We agree that the increased workload from the wartime requirements could affect the quality of the documentation. However, USSOCOM needs to take additional actions related to the price reasonableness determinations. USSOCOM needs to ensure that the contracting officers are adequately supporting and documenting their decisions. Without the required

analyses and supporting documentation, we cannot determine whether USSOCOM is consistently obtaining fair and reasonable prices for items and services procured.

Management Comments on the Finding and Our Response

Although not required, the Director, Center for Acquisition and Logistics, responding for the Commander of USSOCOM, provided comments on the findings. See Appendix C for a summary of management comments and our response.

Recommendations, Management Comments, and Our Response

We recommend that the Commander, U.S. Special Operations Command, improve contracting internal controls by:

- 1. Emphasizing to U.S. Special Operations Command contracting personnel that they:**
 - a. Comply with the Federal Acquisition Regulation when performing price analysis for commercial items.**
 - b. Retain as part of the contract file the supporting documentation used to make the price reasonableness determinations.**
 - c. Have a signed and approved Business Clearance Memorandum before making the contract awards.**

USSOCOM Comments

The Director, Center for Acquisition and Logistics of USSOCOM, responding for the Commander, agreed with the recommendation. Specifically, the director stated that USSOCOM will continue to comply with price analysis requirements for commercial items. The director stated USSOCOM has provided formal training on multiple pricing topics for USSOCOM at Headquarters and Field Contract Offices. The director further stated that the training is available electronically on USSOCOM's Directorate of Procurement Training Bookshelf.

The director also stated the Directorate of Procurement identified file documentation as a material weakness in the FY 2008 Annual Statement of Assurance and in FY 2009, the Annual Statement of Assurance included the results of the DOD IG's draft audit report, "Price Reasonableness Determinations for Contracts Awarded by the U.S. Special Operations Command." As a result, USSOCOM codified and implemented an electronic file management methodology. The director stated metrics were established to provide an aggregate assessment of each office's compliance with the FAR in regards to documenting fair and reasonable price determinations. In addition, the director stated the SOFARS was updated in July 2008 in regards to the independent contract file reviews.

The director stated USSOCOM provided training and they will continue to emphasize the importance of documenting the fair and reasonable price. Finally, the director stated USSOCOM also plans to conduct an internal Directorate of Procurement Management

Review in the third quarter of FY 2010 to verify USSOCOM's management of electronic files.

Our Response

The director's comments are responsive to the intent of the recommendations. No further comments are required.

2. Requiring the periodic review of contract files to determine that the files contain the required documentation, that the documentation has the necessary signatures, and that support exists for the price reasonableness determination decisions.

USSOCOM Comments

The Director, Center for Acquisition and Logistics of USSOCOM, responding for the Commander, agreed with the recommendation and stated in addition to the actions already taken for Recommendation 1, an internal Department of Procurement Management Review will be performed during the third quarter of FY 2010 to ensure the corrective actions are implemented effectively.

Our Response

The director's comments are responsive to the intent of the recommendation. No further comments are required.

3. Updating the U.S. Special Operations Command *Desktop Contracting Guide* to include policy and procedures for all contracting methods to ensure they are in accordance with the Federal Acquisition Regulation, prevent inconsistencies in its application, and provide adequate supporting documentation.

USSOCOM Comments

The Director, Center for Acquisition and Logistics of USSOCOM, responding for the Commander, agreed with the recommendation and stated USSOCOM is continually updating the SOFARS and the DCG to address statutory and regulatory guidance and to implement acquisition best practices. The director stated USSOCOM will be updating the SOFARS to address the proper documentation of fair and reasonable price determinations by the first quarter of FY 2010.

Our Response

The director's comments are responsive and the actions meet the intent of the recommendation. No further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from April 2008 through May 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We focused our efforts on USSOCOM Headquarters procurement contracts greater than \$5 million awarded or administered during FY 2003 through FY 2007. We reviewed the contracts to determine whether USSOCOM complied with FAR requirements for determining price reasonableness.

In addition, we:

- Obtained a list of 734 procurement contracts valued at \$3.3 billion from USSOCOM. These contracts were awarded or administered by USSOCOM Headquarters during FYs 2003 through 2007. This list was used as the overall contract universe. We identified 57 contracts greater than \$5 million. Of those 57 contracts, 2 were removed based on prior audit coverage. The remaining 55 contracts had a total contract value of \$3.0 billion.
- Coordinated with the Quantitative Methods and Analysis Division to develop a sample of 15 contracts from the 55 contracts over \$5 million. The sample was chosen by selecting the 5 highest valued contracts and then drawing a simple random sample of 10 from the remaining 50 contracts. The 15 contracts selected were valued at \$2.4 billion. We used statistical methods to draw the simple random sample of 10 to ensure no bias in our selection of the contracts. We did not plan to project the results from the sample.
- Requested and received from USSOCOM electronic contract files for 14 of the selected contracts and a printed contract file for the remaining contract. These were provided as the official contract files for the contracts selected.
- Interviewed contracting officials and reviewed the contract files to determine how USSOCOM had documented and performed its price reasonableness determinations for the selected contracts.
- Reviewed all price reasonableness determinations for the basic contracts, contract modifications, and task and delivery orders with the exception of contract H9222-05-D-0017. Due to the large number of delivery orders involved in this contract, we selected a random sample of delivery orders for review based on guidance received from the Quantitative Methods and Analysis Division and consulted with the DOD IG Office of General Counsel to determine any potential legal issues.

Use of Computer-Processed Data

We used computer-processed data from USSOCOM's Procurement Desktop Defense system. The Procurement Desktop Defense system processed the contract universe of procurement contracts awarded or administered by USSOCOM Headquarters during FYs 2003 through 2007. We used this data to select our 15 contracts. The report did not make any projections or conclusions based on the universe of contracts.

Use of Technical Assistance

We consulted with personnel from the Quantitative Methods and Analysis Division, Office of the Deputy Inspector General for Auditing, to select the sample of contracts for review.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and the DOD IG have issued three reports related to contracting at USSOCOM. Unrestricted DOD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>.

GAO

GAO Report No. GAO-07-620, "An Analysis of the Special Operations Command's Management of Weapon System Programs," June 28, 2007

GAO Report No. GAO-07-745, "Success of Advanced SEAL Delivery System Hinges on Establishing a Sound Contracting Strategy and Performance Criteria," May 24, 2007

DOD IG

DOD IG Report No. D-2007-109, "Special Operations Command Governmental Purchases," July 9, 2007

Appendix B. Contracts Reviewed

Contract Number	Award Date	Contract Value	Award Source	Contract Type	Purpose of Contract
USZAA22-03-C-0038	June 24, 2003	\$6,933,695	Sole-Source	FFP	Ammunition Rounds
H92222-04-C-0003	October 3, 2003	\$15,443,300	Competition	CPFF	Dynamic Optical Laser Tags
H92222-05-C-0013	March 31, 2005	\$6,816,789	Competition	CPFF	Silent Knight Radar
H92222-05-C-0016	June 13, 2005	\$5,003,843	Sole-Source	CPFF	Foliage Penetrating Radar
H92222-05-D-0002	February 16, 2005	\$125,000,000	Sole-Source	IDIQ, FFP, T&M	Infrared Countermeasures
H92222-05-D-0017	October 6, 2006	\$300,000,000	Competition	IDIQ, FFP, T&M, CPFF	Tactical Land Area Network System
H92222-06-D-0008	June 1, 2006	\$88,640,000	Sole-Source	IDIQ, FFP, T&M, C	Lightweight Grenade Launcher

C = Cost
CPFF = Cost-Plus-Fixed-Fee

T&M = Time-and-Materials
IDIQ = Indefinite-Delivery, Indefinite-Quantity

CPFF = Cost-Plus-Incentive-Fee
FFP = Firm-Fixed-Price

Appendix B. Contracts Reviewed (Continued)

Contract Number	Award Date	Contract Value	Award Source	Contract Type	Purpose of Contract
H92222-07-C-0041	December 12, 2006	\$137,254,084	Competition	CPIF, FFP, C, CPFF	Enhanced Multi-Mode Radar
H92222-07-C-0043	December 15, 2006	\$5,230,000	Limited Competition	FFP	Combat Communications Transceivers
H92222-07-D-0007	December 20, 2006	\$105,000,000	Sole-Source	IDIQ, FFP, T&M, C	Infrared Countermeasures System
H92222-07-D-0008	May 1, 2007	\$422,000,000	Sole-Source	IDIQ, FFP, T&M, C	High-Frequency Radio Systems
H92222-07-D-0012	May 31, 2007	\$440,000,000	Sole-Source	IDIQ, FFP, T&M, CPFF	Multi-Band Radio Program
H92222-07-D-0015	October 5, 2006	\$260,000,000	Sole-Source	IDIQ, T&M, CPFF, FFP	Psychological Operations Print Program
H92222-07-D-0017	October 27, 2006	\$260,000,000	Sole-Source	IDIQ, T&M, CPFF, FFP	Psychological Operations Broadcast Program
H92222-07-D-0021	May 31, 2007	\$250,000,000	Sole-Source	IDIQ, FFP, C	Foreign Language Interpretation and Transcription Service

T&M = Time-and-Materials
 CPIF = Cost-Plus-Incentive-Fee
 FFP = Firm-Fixed-Price
 CPFF = Cost-Plus-Fixed-Fee
 IDIQ = Indefinite-Delivery, Indefinite-Quantity

C = Cost
 CPFF = Cost-Plus-Fixed-Fee

Appendix C. Management Comments on the Finding and Our Responses

U.S. Special Operations Command Comments on the Finding and Our Response

The Director, Center for Acquisition and Logistics, responding for the Commander of USSOCOM, provided comments to our draft report. Although not required, the director provided comments on the finding section of the draft report. Below is a summary of the director's comments and our responses. The complete text of USSOCOM's comments can be found in the Management Comments section of this report.

USSOCOM Comments on Price Reasonableness Determination for Commercial Items

The Director, Center for Acquisition and Logistics, partially agreed with our finding on contract H92222-07-D-0008 and agreed that the contract files lacked sufficient detail in the BCM in regards to fair and reasonable price. The director stated USSOCOM intends to review the pricing over the next 120 days to reaffirm and document the reasonableness of the prices obtained.

Our Response

Although the director partially agreed, the actions USSOCOM will perform are sufficient to address our concerns about the pricing for contract H92222-07-D-0008.

USSOCOM Comments on Documenting the Price Reasonableness Determinations

The Director, Center for Acquisition and Logistics, partially agreed with our findings on contracts H92222-07-D-0015 and H92222-07-D-0017. The director stated the reference to this part of the finding should have been made to only two contracts instead of three and USSOCOM could not trace the \$365 million referenced to these three contracts. The director did agree that price reasonableness decisions should have been better documented. However, the director stated that the electronic filing process was documented as a weakness in the summer of 2007 during an internal procurement management review. The director stated that, in FY 2008, the Directorate of Procurement identified the electronic contract filing process as a material weakness in the Annual Statement of Assurance. Because of the identified material weakness, the director stated USSOCOM implemented an electronic filing corrective action plan during the audit.

Additionally, the director stated Headquarters USSOCOM's Directorate of Procurement does not rely on one source of information to document fair and reasonable price. The director stated USSOCOM contracting officers utilize multiple comparisons of pricing as an element of basing a fair and reasonable price determination. The director restated that the electronic filing system was identified as a Directorate weakness prior to the DOD IG visit. The director stated a corrective action plan has been implemented to improve the

Directorate of Procurement's electronic filing process and USSOCOM has established a comprehensive and consistent system for contract file archival.

The director partially agreed with our finding on contract USZA22-03-C-0038. The director agreed that the Certificate of Current Cost or Pricing Data was not able to be located. However, the director stated that the Swedish government representative verbally provided translation from Swedish to English during numerous telephone conversations, yet USSOCOM failed to request written statements in English from the Swedish government to document the conversations. The director stated that the Directorate of Procurement is training the contracting officers to receive and file pertinent file documentation appropriately.

Our Response

The \$365 million referenced in the report includes the three contracts under the "Documenting the Price Reasonableness Determinations" section and includes \$180 million from contract H92222-07-D-0017, \$180 million from contract H92222-07-D-0015, and \$5 million from contract USZA22-03-C-0038. We have revised the report to identify the \$5 million for contract USZA22-03-C-0038. While we do not disagree that the BCM declared the use of multiple sources for the price reasonableness determination, USSOCOM did not document the direct labor cost support obtained from the Web sites. The updated guidance published in SOFARS 5604.8, "Government Contract Files," and in the DCG, chapter 4, "Administrative Matters," is sufficient to address our concerns about their contract file documentation.

USSOCOM Comments on USSOCOM's Electronic Contract Files

The Director, Center for Acquisition and Logistics, partially agreed with our finding on the electronic contract files. The director stated that USSOCOM does not agree that the official electronic contracting files were not sufficient or complete. The director stated that USSOCOM does agree that the organization of the contract files, in regards to the four contracts cited in the report, was difficult for reviewers to ascertain where file documentation was located.

The director pointed out the Directorate of Procurement has briefed the DOD IG on its corrective action plan, highlighting the filing system deficiencies and outlining the cradle-to-grave filing approach contracting officers are now required to follow to improve the electronic filing process. The director stated their approach involved multiple initiatives to prevent electronic filing failures. This approach includes a chain-of-custody method, where the contracting officer cannot accept a contract file until a thorough review of the contents of the file occurs. The director stated that both live and Web-based training has improved the current contracting files. In addition, the director presented SOFARS, part 5604.803, "Contents of Contract Files," and stated it was revised in August 2008.

Our Response

We disagree with the Director's comments that the official electronic contracting files are sufficient or complete. The report presented seven contracts that did not have a signed

BCM and four additional contracts that were missing other required documents in the contract files. FAR 4.801, “General,” requires that the documentation in the contract files be sufficient to provide a complete background for informed decisions at each step in the acquisition process; support for the actions taken; and provide information for reviews and investigations. These contract files lacked the proper documentation in supporting the price reasonableness determinations; therefore, they were not sufficient or complete. Although the director did not agree with this section, we considered the actions as responsive. The guidance published in SOFARS, part 5604.803, “Contents of Contract Files,” is sufficient to correct the problems we found.

USSOCOM Comments on Sole-Source Contracts

The Director, Center for Acquisition and Logistics, did not agree with our conclusion on the sole-source contracts, and requested that we delete this section in the report. The director stated that this section, on its face, infers that sole-source contracting somehow affects fair and reasonableness price determinations negatively. The director stated the use of sole-source or full and open competition has little to do with the proper execution of a fair and reasonable price determination and, therefore, was outside of the scope of our audit. The director stated it is the responsibility of the contracting officer to determine price reasonableness, regardless of the method of procurement. The director stated USSOCOM complies with the Competition in Contracting Act as implemented in FAR Part 6 and DFARS Part 206 and has a strong record of achieving its competition goals. Additionally, the director stated the sole-source contracts to the Alaskan Native Corporations should be addressed in future legislations and/or regulatory policies and procedures, instead of this report.

Our Response

We disagree with the director’s comments that the sole-source contracts were beyond the scope of the audit. Adequate price competition simplifies price reasonableness decisions but for sole-source contracts, we lose the benefits of the interaction of market conditions. Thus, it is vital that USSOCOM is able to support that the sole-source contracts prices are fair and reasonable through other means. However, of the 15 contracts sampled, 10 were sole-source and 4 of the 10 did not have adequate documentation supporting the price reasonableness determination. We believe it is imperative for USSOCOM to be aware of the magnitude of the sole-source contracts reviewed and the value of maintaining adequate documentation supporting the price reasonableness determination. We did revise the report and removed the statement related to the three Alaskan Native Corporations.

USSOCOM Comments on Alpha Contracting Method

The Director, Center for Acquisition and Logistics, did not agree with our conclusion on the alpha contracting methods, and requested that we delete this section in the report. The director stated that our report presented no evidence that the lack of written alpha contracting procedures contributed to any weakness noted in the report with respect to its fair and reasonable price determination. However, USSOCOM has published guidance and training on the alpha contracting method to establish more consistency in contract negotiations. The guidance was codified in SOFARS 567-1(f) and within the DCG.

Our Response

We disagree with the director's comments that the lack of written alpha contracting procedures does not influence the price reasonableness determination. Alpha contracting is a process used to negotiate contracts, which impacts the price reasonableness determination. Without policies and procedures on how to implement alpha contracting procedures, USSOCOM increases the risk that the prices negotiated are not fair and reasonable or that the decisions are not adequately documented. Although the director did not agree with this section, USSOCOM updated SOFARS, part 5607.104(f), and the DCG, chapter 7, "Acquisition Planning," to include new guidance on the use of the alpha contracting method. Thus, we considered the guidance and revised our report to include the new published alpha contracting guidance.

Additional USSOCOM Comments

The Director, Center for Acquisition and Logistics, provided additional comments regarding the growth of USSOCOM since FY 2001. The director stated that USSOCOM's contracting actions increased 700 percent and contracting dollars increased 570 percent. However, the Directorate of Procurement did not receive additional manpower authorizations until FY 2007 and did not get the personnel until the end of FY 2008. The director points out that while this is not an excuse for the document deficiencies or regulatory noncompliance, it was a contributing factor.

The director stated that today the Directorate of Procurement is nearly 95 percent staffed and has made many adjustments to improve its negotiation capabilities. These adjustments include 97 percent of the Directorate's contract specialists have completed cost and price analysis and documentation training. There is now a pricing section within their Mission Support Division of the Directorate of Procurement staff. He stated the Directorate of Procurement has also hired a pricing analysis intern to assist with future growth. In addition, there is also increasing onsite presence of the Defense Contract Audit Agency.

Our Response

We recognize the difficulties USSOCOM has endured between FY 2001 and the end of FY 2008. We commend USSOCOM's efforts to update the SOFARS and the DCG to meet the intent of the FAR and ensure the Government receives a fair and reasonable price for its acquisitions.

United States Special Operations Command Comments



UNITED STATES SPECIAL OPERATIONS COMMAND
7701 TAMPA POINT BOULEVARD
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

SOAL

06 JUL 2009

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, 400
ARMY NAVY DRIVE, ROOM 801, ARLINGTON, VIRGINIA 22202-4704

SUBJECT: Response to Draft Report of Department of Defense Inspector General Audit of
the Price Reasonableness Determinations for Contracts Awarded by the United States
Special Operations Command, Project No. D2008-D000CG-0123.000

1. On 20 May 2009, the Department of Defense (DoD) Office of the Inspector General (IG) issued a Draft Report on the Logistics Support for the United States Special Operations Command (USSOCOM), Project No. D2008-D000CG-0123.000.
2. USSOCOM appreciates the time and effort the DoD IG Team invested in providing a very thorough and professional review of the price fair and reasonableness determinations. USSOCOM's response to the subject report is contained within the enclosed document.
3. My point of contact for this response is [REDACTED]
at [REDACTED]

Encl
DoD Draft Audit Report Response

JAMES W. CLUCK
Director, Center for Acquisition
and Logistics

UNITED STATES SPECIAL OPERATIONS COMMAND
RESPONSE TO DEPARTMENT OF DEFENSE INSPECTOR GENERAL
DRAFT AUDIT REPORT NO. D2008-D000CG-0123.000
ENTITLED "PRICE REASONABLENESS DETERMINATION FOR CONTRACTS
AWARDED BY THE U.S. SPECIAL OPERATIONS COMMAND"

SUMMARY SECTION

The overall objective of the Department of Defense Inspector General (DoD IG) audit was to determine whether the United States Special Operations Command (USSOCOM) complied with the Federal Acquisition Regulation (FAR) requirements for determining price reasonableness in contract actions. The response contained herein to the Draft Report is broken into two sections:

- A) Findings of the Draft Report and Responses to the DoD IG Findings.
- B) USSOCOM Response to DoD IG Recommendations of the Draft Report.

FINDINGS OF THE DRAFT REPORT

1. The DoD IG findings are summarized below:

USSOCOM contracting officials did not always comply with the FAR when performing and documenting fair and reasonable price determinations. Of the 15 contracts reviewed, with a total value of about \$2.4 billion, we identified 4 contracts that had total negotiated contract prices of about \$721 million that did not comply with the FAR for supporting and documenting price reasonableness decisions. The price reasonableness determinations did not comply with the FAR because:

- a. On one contract, the contracting specialist used the contractor's catalogs for determining the price reasonableness of \$ 356 million in commercial hardware items. The contracting specialist's approach did not include the additional documentation for commercial items required in the FAR.
- b. On two contracts, USSOCOM did not retain documentation from the Internet searches used to support the contracting officers' price reasonableness determinations on the \$360 million not-to-exceed amount for firm-fixed-price and time-and-material direct labor costs.
- c. On another contract, the contracting officials did not completely translate the cost proposal and other supporting documentation from a foreign contractor into English so we could not evaluate the price reasonableness determination.
- d. Other factors affecting USSOCOM price reasonableness determinations were the condition of the electronic contracting files, use of sole-source contracts, and the lack of policy and procedures for using the alpha contracting method.

DoD IG Finding A. Price Reasonableness Determination for Commercial Items (Reference Draft Report, Pages 4-5).

FINDING A: USSOCOM awarded one contract for commercial items without independently verifying the accuracy of the contractor's catalog prices in accordance with the FAR. Contract H92222-07-D-0008, valued at \$422 million, was for the procurement and sustainment of a high-frequency radio system. The contract included 173 Contract Line Item Numbers primarily for hardware items with a value of \$356 million. The contractor supplied catalogs to support the pricing for the Contract Line Item Numbers. According to the Business Clearance Memorandum (BCM), USSOCOM received a 20 percent discount off the catalog prices as a "most favored customer."

The BCM stated that the contract specialist used the proposed contractor's catalog to determine the contractor prices as fair and reasonable without any further analysis. For the items not listed in the commercial catalogs, the contract specialist verified the accuracy of the mathematical calculation in the contractor's cost build-up information. FAR Subpart 15.403-3(c)(1), "Requiring Information Other Than Cost or Pricing Data," states that inclusion of a price in a catalog does not in and of itself establish fairness and reasonableness of the price.

FAR Subpart 12.209, "Determination of Price Reasonableness," requires price reasonableness for commercial items to be established in accordance with FAR Subpart 15.4, "Contract Pricing." FAR 15.402(a)(2), "Pricing Policy," states that in evaluating price reasonableness the contracting officer should first rely on information available within the Government; second, on information obtained from sources other than the contractor; and, if necessary, on information obtained from the contractor. The pricing method for commercial items in FAR Subpart 15.403-3(a), "Requiring Information Other Than Cost or Pricing Data," states that if the contracting officer cannot obtain adequate information from sources other than the contractor, the contracting officer must require submission of information other than cost or pricing data from the contractor to determine a fair and reasonable price. The contracting officer must require that the information submitted by the contractor include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold. The contracting officer did not perform any additional analysis beyond the prices in the sales catalog. Although USSOCOM received a 20 percent discount off the catalog prices, without additional analysis or similar sales data, the Government has no basis for relying on the catalog prices.

USSOCOM Response to Finding A. Partially Concur. The Government concurs that the official contract file lacks sufficient detail in the BCM related to the fair and reasonable price determination. USSOCOM intends to review the pricing of contract H92222-07-D-0008 over the next 120 days to re-affirm and document the reasonableness of the pricing obtained.

DoD IG Finding B. Documenting the Price Reasonableness Determinations (Reference Draft Report, Pages 5-7)

FINDING B: *USSOCOM did not always comply with the FAR for documenting the determination that prices negotiated were fair and reasonable. As a result, we were unable to fully evaluate the contracting officers' price reasonableness determination decisions for \$365 million in negotiated prices on three contracts. FAR Subpart 4.803 requires the contract file to contain the signed contract or award, contract modifications, and documents supporting modifications executed by the contracting office. The Defense Procurement Acquisition Policy, Contract Pricing Reference Guide, volume 1, "Price Analysis," chapter 10, "Documenting Pricing Actions," states:*

Good documentation is essential to good contracting. As time goes on, you forget times, dates, persons involved, and pricing in particular...Lack of documentation is generally treated as a lack of action. If it is not documented, it never happened.

FAR Subpart 15.406-3(a), "Documenting the Negotiation," requires the contracting officer to document the principal elements of the negotiated agreement in the contract file. The documentation should include the purpose of the negotiation, a summary of the contractor's proposal, any field pricing assistance recommendations, and documentation of fair and reasonable pricing.

Contract H92222-07-D-0015

This contract was a sole-source award to an Alaskan Native Corporation to build, field, and sustain the Psychological Operations Print System Program. The delivery order contract had a not-to-exceed price of \$260 million, which included \$180 million for time-and-material and firm-fixed-price direct labor. According to the BCM, price reasonableness for the direct labor was evaluated by randomly selecting from the contractor's accounting system salary information for 33 percent of the proposed labor categories. The contractor's salary information was compared to salary information found on the Department of Labor and Salary.com Web sites. USSOCOM then compared the contractor's fully burdened labor rates with five other firms with similar labor categories descriptions (that is, education, experience, credentials). Of the five firms, four were GSA schedule holders on the Professional Engineering Services schedule and one contractor was a manufacturing company with a USSOCOM contract.

Contract H92222-07-D-0017

This contract was a 5-year indefinite-delivery, indefinite-quantity for professional engineering and technical services to support the Psychological Operations Program Office. The contract was a sole-source award to an Alaskan Native Corporation. The delivery order contract had a not-to-exceed price of \$260 million, which included \$180 million in firm-fixed-price and time-and-material direct labor costs. The analysis of the direct labor costs described in the BCM was similar to the analysis performed for H92222-07-D-0015. The one exception was that the Defense Contract Audit Agency performed an audit of the direct labor costs for another proposal that the contractor had submitted for a contract being awarded by the U.S. Army Communications Electronics Life Cycle Management Command. The Defense Contract Audit

Agency audit “questioned a portion of the direct labor rates for 92 of the proposed 143 labor categories.” In addition, the Defense Contract Audit Agency expressed the opinion that a free salary service such as Salary.com does not provide a reasonable and reliable basis for labor compensation rates.

On contracts H92222-07-D-0015 and H92222-07-D-0017, the contracting officer explained that a printout of the information obtained from the Web sites was not included in the contracting file since it could be accessed through the Web sites listed in the BCM. We performed a limited review of the labor categories listed in the BCM using the Web sites and were unable to recreate or duplicate the contracting specialist’s results. In this instance, listing the Web sites in the BCM is not sufficient documentation to support the price reasonableness determination. In addition, the contract file did not contain the details on the comparison of the fully burdened rates. The contracting officer explained that a support contractor performed the comparison “but did not provide the information to the contracting office, nor did the support contractor file the documentation in the electronic contract file.” Without the printouts from the Web sites and the supporting documentation on the fully burdened labor rates, we were unable to fully evaluate the contracting officer’s price reasonableness determination decision. We also agree with DCAA that performing internet searches of free salary services does not provide a reliable basis for assessing the reasonableness of the contractor’s direct labor rates.

USSOCOM Response to Finding B. Partially concur. Reference should be made to two contract examples vice three cited in the draft report. USSOCOM was unable to trace the \$365M referenced in Finding B to H92222-07-D-0015 and H92222-07-D-0017. Based on the two specific examples documented in the draft report, the price reasonableness decisions should have been better documented. However, the Directorate of Procurement documented a weakness with the electronic filing process in the summer of 2007 during an internal procurement management review (PMR). In the summer of FY 2008, the Directorate of Procurement documented contract administration, specifically the electronic contract filing process as a material weakness in the Annual Statement of Assurance (ASA) and implemented an electronic filing corrective action plan which was briefed to the DoD/IG team during the audit.

Revised, Page i, 3,
5 and 7

Regarding the reference to HQ USSOCOM’s use of “free” internet searches, HQ USSOCOM’s Directorate of Procurement does not rely on one source of information to document a fair and reasonable price. HQ USSOCOM’s contracting officers utilize multiple comparisons of pricing, whether provided by “free” internet searches or from fee-based sources as an element of comparison on which to base a fair and reasonable price determination. Additionally, as addressed in Findings A and D of this report, the electronic filing systems were identified as a Directorate weakness and a special interest item for HQ USSOCOM Directorate of Procurement prior to the DoD/IG’s visit. As explained to the DoD IG, the corrective action plan to improve the Directorate of Procurement’s electronic filing process has been implemented and a comprehensive and consistent system for archiving contract file information has been established.

DoD IG FINDING C. Contracting Officials Did Not Completely Translate the Cost and Other Supporting Documentation from a Foreign Contractor into English. (Reference Draft Report, Page 7)

FINDING C: Contract USZA22-03-C-0038

This was a sole-source award based on unusual and compelling urgency made to a Swedish company for the purchase of anti-structure munitions for the M3 rifle. The contract was a firm-fixed-price contract for about \$6.9 million. USSOCOM contracting officials definitized the contract in modification 2 and did a price reasonableness determination. According to the BCM, USSOCOM determined price reasonableness by relying on the contractor's cost and pricing data and an audit performed by the auditing agency for the Swedish government. The contract file did not contain a Certificate of Current Cost or Pricing Data.

The BCM explained that "an audit by DCAA [Defense Contract Audit Agency] was anticipated, but due to extreme delays with the contractor submitting a qualifying proposal, there was not sufficient time for an audit." Instead, the cognizant auditing agency of the Swedish government conducted the audit that USSOCOM relied on to determine price reasonableness. However, the audit report provided to USSOCOM was in Swedish. Contracting officials did not completely translate the audit report into English when evaluating the contractor's proposal. A significant cost element-direct labor rates-was not translated. Therefore, we could not verify that USSOCOM properly evaluated the labor categories when determining price reasonableness. In addition, the justification for not using DCAA to audit the proposal was questionable, since USSOCOM did not negotiate the definitized price until modification 2, which was over 4 months from the date of the initial contract award.

USSOCOM Response to Finding C. Partially Concur. The Directorate of Procurement contracting officer for the referenced contract was not able to locate the certificate of current cost or pricing data. However, the translation from Swedish to English was verbally provided by Swedish government representatives during numerous telephone conversations. The Directorate of Procurement contracting officer failed to request written statements from the Swedish government to document the conversations. Consequently, the Directorate of Procurement has taken corrective action by requiring and training contracting officers to ensure pertinent file documentation is received and filed appropriately.

DoD/IG FINDING D. Other Factors Affecting USSOCOM Price Reasonableness Determinations were the Condition of the Electronic Files, Use of Sole-Source Contracts, and the lack of Policy and Procedures for Using the Alpha Contracting Methods. (Reference Draft Report Pages, 7-9)

FINDING D:

(1) USSOCOM's Electronic Contract File

USSOCOM's official electronic contracting files were not sufficient, organized, or complete. The files provided appeared to be a data dump of documents that could have been related to the

contract. The contracting files contained documents that were missing the required contracting officials' signatures and in some instances; the files did not include the required documentation.

Business Clearance Memorandums

We identified seven contracts that did not have signed BCMs in the contract files. The BCMs supported contracting actions that ranged from \$649,949 to \$300 million. SOFARS attachment 5601-1 requires that appropriate levels of authority review and approve BCMs prior to contract award. Review and approval procedures must be in accordance with the dollar value limitations specified. For example, for the period March 2002 through February 2007—the period covered by most of the contracts reviewed—the reviews specified were as follows.

Table. Review and Approval Process

Action	Review	Approval
\$500,000 to \$5,000,000	Legal	Contracting Officer
\$5,000,000 to \$50,000,000	Legal	Branch Chief
Over \$50,000,000 to \$100,000,000	Legal	Chief, Contracting Officer
Over \$100,000,000	SOAL-KA* and Legal	SOAL-KA*

*Special Operations and Logistics-Field Assistance Division.

The review and approval of the BCM is an important internal control over the award of the contracts and the contract prices. Without a signed BCM the contracting officer cannot be assured that management would approve of the prices paid or the negotiation process. USSOCOM officials are aware of the issues related to the insufficiency of these files and are taking action to resolve these issues and bring the files into conformance with the FAR.

Missing Documents

The electronic contract files that USSOCOM provided did not always contain required documentation. As discussed previously, the contract files for H9222-07-D-0015 and H9222-07-D-0017 did not contain documentation on a support contractor's analysis of the fully burdened labor rates. Two other contract files (H92222-05-0016 and USZA22-03-C-0038) did not have the Certificates of Cost and Pricing Data required by FAR 15.406-2. Another contract file for H92222-05-D-0002 contained only one of the two contractor proposals referred to in the BCM.

USSOCOM Response to Finding D. Partially Concur. (See Below).

Electronic Contract Files – USSOCOM does not concur with the general statement: “USSOCOM's official electronic contracting files were not sufficient, organized, or complete.” USSOCOM concur that the organization of the contract files selected by the DoD IG (4 of 15 files as referenced in page 1 of the Draft DoD IG Report) made it difficult for reviewers to ascertain where file documentation was located. However, as previously stated, the Directorate of Procurement briefed the corrective action plan to improve the electronic filing process to the DoD IG team on 24 September 2008. This presentation highlighted the deficient conditions of the filing systems. The presentation went on to provide a synopsis of the cradle-to-grave filing approach that is mandatory for all USSOCOM contracting officers to follow. The approach as

synopsis below, and as presented to the DoD IG team members, represents multiple initiatives that prevent electronic filing failures. Initiatives, such as the chain-of-custody approach, in which no contract is accepted by any contracting officer until a thorough review of the contents of a contract file occurs, has already yielded outstanding results for the Directorate. Additionally, training, both live and via the Procurement Directorate Web-based portal, has positively affected the status of current contracting files.

Policies for managing official contract files are provided in the Special Operations Federal Acquisition Regulation Supplement (SOFARS). Specifically, SOFARS Part 5604.803, Contents of Contract Files, as revised in August of 2008 states the following:

- (a) "The use of electronic contract files is mandatory, unless otherwise approved in writing by the Deputy Director of Procurement (DDOP). If there is a classified document(s) to an otherwise unclassified contract file, the document electronic file shall be stored in a folder on the appropriate secure network, and the hardcopy documents shall be stored in the appropriate secure container. A cross-reference annotation will be made on the file index specifying where the document is located.
- (b) All contract files must be arranged in accordance with the appropriate file index located in the DCG.
- (c) Additionally, 6 part folders shall be used when hardcopy files have been approved in accordance with paragraph (a) above. Numbered tabs must be at the side of a page, which act as a divider between each category of documents (i.e. A-1, B-1, B-2, B-3).
- (d) Use of the contract [Administrative Checklist](#) is recommended for all contracts exceeding the simplified acquisition threshold. Use of the Delivery/Task Order Checklist is recommended for all orders.
- (e) Filing conventions for contract files are specified in DCG chapter 4, item 1.
- (f) Follow DCG chapter 4, item 2 for specific mandatory contract files assurance actions.
- (g) "SOAL-KM's [Critical Documents Checklist](#) is provided to alert contracting officers of the 15 critical documents that will be surveyed during all policy reviews, regardless of scope of the required review. The list includes their review point and the file tab in which the documents are expected to be located."

DoD IG Report Statement:

Other Factors Affecting the Price Reasonableness Determinations

We identified two additional factors that could affect the contracting officer's price reasonableness determinations. USSOCOM use of sole-source contracts and alpha contracting.

(2) Sole-Source Contracts

USSOCOM awarded 10 of 15, or 67 percent, of the sample contracts on a sole-source basis. The 10 contracts had an estimated total value of \$2 billion, which represented 81 percent of the

total dollar value for the 15 contracts reviewed. The 10 contracts included 3 contracts valued at about \$770 million to Alaskan Native Corporations. The FAR allows USSOCOM contracting officials to award the sole-source contracts with the appropriate justification. We did not review the sole-source justification for these contracts to determine their compliance with the FAR.

USSOCOM use of sole-source contracts is not necessarily in the best interest of the Government. As the Administrator, Office of Federal Procurement Policy explained in a May 31, 2007, memorandum, "competition is the cornerstone of our acquisition system." He reemphasized the need for competition, stating that the benefits are savings for the taxpayer, improved contractor performance, reduced fraud, and promote accountability for results. In distributing the Administrator's memorandum to DoD, the Director Defense Procurement and Acquisition Policy stated that DoD needed to place greater emphasis on promoting competition, including placement of delivery orders against multiple-award contracts.

USSOCOM Response to Finding D. Non-concur

Sole-Source Contracts - USSOCOM non-concurs with this portion of the draft report and requests deletion of the section entitled, "Sole-Source Contracts." This section on its face infers that sole source contracting somehow affects fair and reasonableness price determinations negatively. Page ii of the draft report states the purpose of the DoD IG review was to "determine whether USSOCOM complied with Federal Acquisition Regulation requirement when determining price reasonableness." USSOCOM uses sole source or competitive methods for acquiring goods and services based on the prevailing circumstances of the requirement, the market research and the approved acquisition strategy, and applicable statutory and regulatory direction and guidance (e.g., Competition in Contracting Act (CICA) of 1984, as implemented in FAR Part 6 and Department of Defense FAR Supplement (DFARS) Part 206). Regardless of the type of procurement method used, it is incumbent on the contracting officer to establish that the Government is paying a fair and reasonable price. Whether the procurement action, in and of itself, is sole source or competitive has little to do with the proper execution of a fair and reasonable price determination and, therefore, is outside the scope of this review which was to "determine whether USSOCOM complied with Federal Acquisition Regulation requirement when determining price reasonableness."

Notwithstanding the above, USSOCOM complies with the requirements of the Competition in Contracting Act (CICA) of 1984, as implemented in FAR Part 6 and Department of Defense FAR Supplement (DFARS) Part 206. Title 10 U.S.C., 2304(c), authorizes under certain conditions, contracting without providing for full and open competition for all federal agencies when certain exceptions (discussed in FAR 6.302) are documented and approved. When the exceptions of CICA are justified and approved, USSOCOM takes prudent measures to ensure that the risks associated with noncompetitive contracts are minimized. This includes the application of various cost/price analysis methodologies to determine a fair and reasonable price.

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USSOCOM has a strong record in achieving its competition goals. USSOCOM develops and recommends a command competition goal for approval by the Director of Procurement and Acquisition Policy (DPAP) and the Office of Federal Procurement Policy (OFPP). For example, USSOCOM exceeded its FY 2007 competition goal of 54.2% by 13.8%. Again in FY 2008, USSOCOM's competition rate of 44.4% exceeded the Command's goal of 43.1%.

As it pertains to the DoD IG's comment regarding sole source contracts to Alaskan Native Corporations (ANCs), it is the position of USSOCOM that concerns related to use of the ANC program should be addressed in future legislation and/or regulatory policies and procedures, vice this report. These actions are expressly authorized by the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act, as supplemented by the Alaska Native Claims Settlement Act of 1971, and the Business Opportunity Development Reform Act of 1988, and as implemented by Title 13, Code of Federal Regulations, Section 124.506(b) and Federal Acquisition Regulation 19.805-1(b)(2).

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DoD IG Report Statement:

(3) Alpha Contracting Method

USSOCOM contracting officials used the alpha contracting method when negotiating six of the contracts valued at \$1.4 billion. USSOCOM officials provided us a document from the Internet to explain alpha contracting. According to the document, alpha contracting is an integrated product team approach that involves officials of the requiring department, the contracting officer, auditors, the contractor, and the principal subcontractors. The group jointly develops the technical and cost details of the contract agreement. USSOCOM did not have any formal policies and procedures specifying how to implement alpha contracting. Based on the number of contracts negotiated using alpha contracting and their dollar value, USSOCOM needs to establish an internal control over the process. Specifically, USSOCOM needs to establish formal policies and procedures governing the use of the alpha contracting method.

USSOCOM Response to Finding D. Non-concur

Alpha Contracting Method -USSOCOM non-concurs with this portion of the draft report and requests deletion of the statement that alpha-contracting affects price reasonableness determinations. For the reasons stated above with regard to "sole source contracts", no evidence or findings are presented that the lack of written alpha contracting procedures contributed to any weakness noted in the report with respect to its fair and reasonable price determinations.

Nonetheless, to establish more consistency in how alpha contracting is used in USSOCOM contract negotiations, guidance has been published and recurring training on the alpha contracting method has been provided. This guidance was recently codified in the Special

Operations Command FAR Supplement, the SOFARS 5607.1 (f) and within the Desktop Contracting Guidance (DCG).

USSOCOM RESPONSE TO DoD IG RECOMMENDATIONS OF THE DRAFT REPORT

DoD Recommendation 1 (Reference Draft Report, Page 10). We recommend that the Commander, United States Special Operations Command improve contracting internal controls by:

Emphasizing to U.S. Special Operations Command contracting personnel that they:

- a. Comply with the Federal Acquisition Regulation when performing price analysis for commercial items.
- b. Retain as part of the contract file the supporting documentation used to make price reasonableness determinations.
- c. Have a signed and approved Business Clearance Memorandum before making the contract awards.

USSOCOM Response to Recommendation 1.a. Concur. Pursuant to the execution of USSOCOM's Title 10 acquisition responsibilities, USSOCOM will continue to comply with price analysis requirements for commercial items. In the past twelve months, formal training has been provided on multiple pricing topics for the HQ's USSOCOM Contracting Offices. This same training has been provided to Field Contracting Offices as part of the 2009 Directorate of Procurement "Training Road Shows" conducted in multiple geographical locations.

Additionally, the training is also available electronically, including the power point slides and streaming video presentations, on the USSOCOM Directorate of Procurement Training Bookshelf.

Timeline for Completion of Recommendation 1.a. Training was completed between the time the DoD IG initiated its audit in April 2008 and receipt of the draft and will continue to emphasize the importance of documenting the fair and reasonable price

USSOCOM Response to Recommendations 1.b and c. Concur. The following actions have been instituted between the time the DoD IG initiated its audit in April 2008 and receipt of the draft report:

- (1) The Directorate of Procurement identified file documentation as a material weakness in the FY 2008 Annual Statement Assurance (ASA) prior to the DOD IG audit. As detailed above, an electronic file management methodology was codified and implemented.
- (2) In the FY 2009 ASA, the Directorate of Procurement expanded the file documentation material weakness by including the results of the DoD IG's audit

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of fair and reasonable price as a material weakness. As a matter of practice, procurement analysts, when conducting contract file compliance reviews, rely solely on the electronic contract file.

- (3) Metrics were established in the Directorate's quarterly "Health of Office" to provide and aggregate assessment of each office's compliance with FAR mandate for documenting fair and reasonable price determinations.
- (4) The SOFARS was updated in July 2008 relative to requirements for independent contract file reviews
- (5) Training on documentation of fair and reasonable price determinations was initiated in the first quarter of FY 2009 and is a continued point of emphasis of the USSOCOM internal training program.

As a follow-up to the electronic files management policies and procedures development this past year, an internal DOP Procurement Management Review (PMR) will be conducted in the third quarter of FY 2010 to verify improvement in directorate management of electronic files.

Timeline for Completion of Recommendations 1.b and c.

In addition to the actions completed between the time the DoD IG initiated its audit in April 2008, and finalization of the DoD IG report, an internal DOP PMR will be conducted in the third quarter of FY 2010. Although corrective action on the electronic file weakness is essentially completed, not later than first quarter, FY 2010, SOAL-K will develop, publish, and train additional policies and procedures on proper documentation of fair and reasonable price determinations.

DoD Recommendation 2 (Reference Draft Report, Page 10). Requiring the periodic review of contract files to determine that the files contain the required documentation, that the documentation has the necessary signatures, and that support exists for the price reasonableness determination decisions.

USSOCOM Response to Recommendation 2. Concur. This is accomplished using the processes discussed in USSOCOM's response to recommendations 1.b. and 1.c. above.

Timeline for Completion of Recommendation 2.

In addition to the actions completed between the time the DoD IG initiated its audit in April 2008, and finalization of the DoD IG report, an internal DOP PMR will be conducted in the third quarter of FY 2010 to validate that the appropriate corrective actions are fully implemented and effective.

DoD Recommendation 3 (Reference Draft Report, Page 10). Updating the U.S. Special Operations Command *Desktop Contracting Guide* to include policy and procedures for all

contracting methods to ensure they are in accordance with the Federal Acquisition Regulation, prevent inconsistencies in its application, and provide adequate supporting documentation.

USSOCOM Response to Recommendation 3. Concur. USSOCOM is continually refining content in the SOFARS and Desktop Contract guide to address statutory and regulatory guidance and to implement acquisition best practices.

Timeline for Completion of Recommendation 3. Actions associated with this recommendation were completed between the time the DoD IG initiated its audit in April 2008 and receipt of the draft report. New SOFARS policy to address proper documentation of fair and reasonable price determinations will be completed the first quarter of FY 2010.

CONCLUSION: It is important to note that the HQ USSOCOM Directorate of Procurement (SOAL-K) experienced a staggering increase in contract actions (700%) and dollars (570%) obligated since FY 2001 without any substantial increase in manpower authorizations until the end of FY 2007. The Directorate of Procurement received 24 additional manpower authorizations in FY 2007; however, the additional personnel to fill these positions were not fully in place until the end of FY 2008. While not a justification for documentation deficiencies or regulatory non-compliances, the staffing deficit was identified as a contributing factor to a lack of clarity in the documentation and/or any improper filing or archiving of documentation. Today, approximately one year after the audit was conducted, the situation is much different. The Directorate of Procurement is nearly fully staffed with 95% of its positions filled. Additionally, the headquarters staff has taken a number of steps to increase its negotiation and pricing capabilities to include:

- (1) Conducting extensive training in cost and price analysis and documentation throughout the past year. In addition to the basic Defense Acquisition University price/cost analysis training of which 97% of the directorate's contract specialist have completed, additional pricing training was provided to 92% of the contract specialist workforce within the past year.
- (2) Creating a pricing section within our Mission Support Division of the Directorate of Procurement staff. This section is led by a highly seasoned price analyst and supported by another price analyst. This pricing section is focused on providing a superior staffing level to assist the Headquarters USSOCOM and field contracting offices.
- (3) Posturing for future growth and an anticipated need for expanded pricing skills. A price analyst intern has been hired under the Section 852 initiative of the FY 2009 National Defense Appropriation and Authorization Act; a selection has been made for this position and the individual is projected to arrive in August 2009.
- (4) Increasing onsite Defense Contract Audit Agency (DCAA) support. In response to a continuing rise in USSOCOM procurement activity, the Command has also increased its onsite DCAA support by adding an additional liaison position to the current position DCAA already provides.



Inspector General Department of Defense